

This letter discusses sales in interstate commerce that originate in Illinois. 86 Ill. Adm. Code 130.605. (This is a GIL).

August 18, 2004

Dear Xxxxx:

This letter is in response to your letters dated February 25, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letters you have stated and made inquiry as follows:

1st Letter:

I REPRESENT A CLIENT WITH CORPORATE OFFICES, WAREHOUSE, INVENTORY AND EMPLOYEES IN CITY, ILLINOIS. HE HAS NO NEXUS IN ANY OTHER STATE.

THEY SHIP THEIR PRODUCTS TO ILLINOIS CUSTOMERS AND CUSTOMERS IN 37 OTHER STATES.

WE RESPECTFULLY REQUEST WHAT TAXES ARE APPLICABLE TO THE SALES IN ILLINOIS AND THE SALES TO THE OTHER STATES, WHERE WE HAVE NO NEXUS.

YOUR IMMEDIATE RESPONSE TO OUR REQUEST WILL BE GREATLY APPRECIATED.

2nd Letter:

I REPRESENT A CLIENT WITH CORPORATE OFFICES, WAREHOUSE, PRODUCT AND EMPLOYEES LOCATED IN ILLINOIS ONLY.

THEY SHIP A VARIETY OF PRODUCTS THROUGHOUT THE UNITED STATES.

WE RESPECTFULLY REQUEST A RULING FROM YOU ON WHAT TAXES IF ANY ARE APPLICABLE TO THE INTERSTATE SALES.

YOUR CO-OPERATION, GUIDANCE AND IMMEDIATE RESPONSE TO OUR REQUEST WILL BE GREATLY APPRECIATED.

DEPARTMENT'S RESPONSE

For general information purposes we are unable to provide specific information to you given the limited information contained in both letters submitted to the Department.

The following information outlines the principles of nexus and we hope it is helpful to you in determining whether you are responsible to pay and/or collect tax in Illinois. An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the out-of State Retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax law. The Supreme Court has set out a two prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis will trigger Use Tax collection responsibilities. See *Brown's Furniture, Inc. v. Wagner*, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State.

For general information regarding jurisdictional questions involving Home Rule Municipal Retailers' Occupation Tax, see 86 Ill. Adm. Code 270.115. In addition, please refer to 86 Ill. Adm.

Code 130.605 regarding sales in interstate commerce. You may also wish to review general information letter ST 03-0050-GIL under the Sales Tax “sunshine letters” located on the Department’s internet website.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department’s Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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